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LEGAL RHETORIC PROGRAM

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March 23, 2017

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: FOIA Request pertaining to Extraordinary Restitution.

Dear Sir or Madam:

This request pertains to records concerning payments made under what is sometimes called Extraordinary Restitution. I have made similar requests to the Department of Justice.

I request copies of the following documents:

1. All guidance documents, policies, regulations regarding the selection of persons or entities to receive funds from a defendant as community service in conjunction with § 5-11.115 - "Global Settlements"; **Community Service** of the U.S. Attorneys' Manual, <https://www.justice.gov/usam/usam-5-11000-environmental-crimes#5-11.115>
2. All guidance documents, policies, or regulations regarding the selection of persons or entities to receive funds from a defendant as community service in conjunction with § 9-16.325 - **Plea Agreements, Deferred Prosecution Agreements, Non-Prosecution Agreements and "Extraordinary Restitution"** of the U.S. Attorneys' Manual, <https://www.justice.gov/usam/usam-9-16000-pleas-federal-rule-criminal-procedure-11#9-16.325> .
3. All documents approving or recommending approval of the payment of "\$2.394 billion (\$2,394,000,000.00) to the National Fish and Wildlife Foundation ("NFWF"), a nonprofit organization" from BP Exploration & Production, Inc. as required by ¶ 35 of the Guilty Plea Agreement in *United States v. BP Exploration & Production, Inc.*, (E.D. La. 2:12-cr-00292-SSV-DEK).
4. All documents discussing the selection of persons or organizations (other than those proximately injured by BP's actions) that might receive payments from BP Exploration & Production, Inc. as part of a possible Guilty Plea Agreement in *United States v. BP Exploration & Production, Inc.*

5. All documents discussing the criteria for selecting persons or organizations (other than those proximately injured by BP's actions) to receive payments from BP Exploration & Production, Inc. as part of a possible Guilty Plea Agreement in *United States v. BP Exploration & Production, Inc.*
6. All documents setting the criteria for selecting persons or organizations (other than those proximately injured by a defendant's actions) to receive payments from a defendant under § 5-11.115 - "Global Settlements"; Community Service of the U.S. Attorneys' Manual.
7. All documents setting the criteria for selecting persons or organizations (other than those proximately injured by a defendant's actions) to receive payments from a defendant under § 9-16.325 - Plea Agreements, Deferred Prosecution Agreements, Non-Prosecution Agreements and "Extraordinary Restitution" of the U.S. Attorneys' Manual.
8. All communications from the government to the National Fish and Wildlife Foundation (or its representatives or people advocating on its behalf) that address, mention, or pertain to possible payments to the National Fish and Wildlife Foundation as part of a resolution of *United States v. BP Exploration & Production, Inc.*, (E.D. La. 2:12-cr-00292-SSV-DEK).
9. All communications from the National Fish and Wildlife Foundation (or its representatives or people advocating on its behalf) to the government that solicit, address, mention, or pertain to possible payments to the National Fish and Wildlife Foundation as part of a resolution of *United States v. BP Exploration & Production, Inc.*, (E.D. La. 2:12-cr-00292-SSV-DEK).
10. All communications from or on behalf of entities not proximately injured by BP's actions, other than the National Fish and Wildlife Foundation, to the government that solicit, seek, or inquire about possible payments to them as part of a resolution of *United States v. BP Exploration & Production, Inc.*, (E.D. La. 2:12-cr-00292-SSV-DEK).

I request a waiver of all fees. I am an academic requester. The information is sought for educational and public interest purposes. I intend to use it in a scholarly article I am writing about Congressional oversight of federal spending. The information sought includes information about the payment of \$2.394 billion (\$2,394,000,000.00) to the National Fish and Wildlife Foundation by a criminal defendant. The information sought pertains to how and why the Executive Branch decided to have this amount of money paid to this organization, as opposed to other organizations. There is a substantial public interest concern whenever government bestows such a large amount of money on a single organization as part of a criminal prosecution. This public interest concern is demonstrated by Congress' active consideration of legislation pertaining to the practice. See H.R. 732: Stop Settlement Slush Funds Act of 2017.

The subject of the request pertains to the operation or activities of government – the Executive Branch bestowing \$2.394 billion on a single organization to be paid by a criminal defendant. The disclosure of responsive documents is likely to contribute to an understanding of government operations or activities because it will provide some information as to how and why the decision was made to award this money, the manner in which beneficiary organizations are chosen, and the manner in which potential beneficiary organizations apply to be chosen. The disclosure will contribute to the understanding of a reasonably broad audience because publication of the information will enlighten the public as to how Executive Branch officials determine which entities will receive substantial grants paid by defendants

prosecuted for environmental crimes. Responsive information will likely be considered by Congress. See, e.g., H.R. 732.

I request expedited processing so that Congress can consider the information and so I can complete the article in timely fashion. The information sought will be relevant to Congress' consideration of H.R. 732 and similar legislation. Disclosure of responsive documents will help Congress and the public better understand these issues. Publication of my article may as well.

My seriousness as a scholar is reflected in my academic publications. See https://works.bepress.com/paul_figley/. In the past year I have testified before Congress three times on related issues: "Oversight of the Judgment Fund" before the Committee on the Judiciary, Subcommittee on the Constitution and Civil Justice, United States House of Representatives (Washington, D.C., March 2, 2017); "Oversight of the Judgment Fund: Iran, Big Settlements, and the Lack of Transparency" before the Committee on the Judiciary, Subcommittee on the Constitution and Civil Justice, United States House of Representatives (Washington, D.C., September 2, 2016); "Stop Settlement Slush Funds Act of 2016," before the Committee on the Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, United States House of Representatives (Washington, D.C., April 28, 2016).

Thank you for your attention to this request. Please telephone or email me if you have any questions. I certify that all statements pertaining to my requests for fee waiver and expedited processing are true.

Sincerely,



Paul Figley
Associate Director
Legal Rhetoric Program

Sent via email through FOIAonline